IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4770 of 1992

For Approval and Signature:

HONOURABLE MS. JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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LAXMANBHAI K CHOKSHI - Petitioner(s)
Versus
COMPETENT AUTHORITY & ADDITIONAL COLLECTOR (ULC) - Respondent(s)

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Appearance :
MR CHINMAY GANDHI for MR MB GANDHI for Petitioner(s) : 1,
MS MINI NAIR, A.G.P., for Respondent(s) : 1,

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

Date : 03/07/2007

ORAL JUDGMENT

The petitioner, holder of the land Survey No.466-A admeasuring 2428 sq. mts. situated at Rakhial, challenges the Judgment and order dated 13th September, 1991, passed by the Urban Land Tribunal in

Appeal No. Ahmedabad 212 of 1990.

On introduction of the Urban Land Ceiling & Regulation Act, 1976 (hereinafter referred to as “the Act”) the petitioner filed declaration of his holding u/s.6 of the Act. According to the statement made in form No.1, filed u/s.6 of the Act, the petitioner owned two pieces of land, viz. One at Rakhial bearing Survey No.466-A admeasuring 2428 sq. meters and another at Kalupur bearing Survey No.2069/6 admeasuring 42 sq. yards. Both the lands were constructed. The said declaration submitted by the petitioner was processed by the Competent Authority, appointed under the Act. Before the Competent Authority the petitioner submitted that out of the land Survey No.466/A the area admeasuring 482 sq. meters was under acquisition under the Town Planning Act for road widening. In the remaining land there was certain construction. Considering the extent of construction and the land appurtenant the petitioner did not hold excess vacant land within the meaning of the Act. Whereas, the other land Survey No.42 situated at Kalupur was wholly constructed for residential purpose and had no open land. The Competent Authority by its order dated 31st July, 1990 rejected the claim made by the petitioner and held that the entire land Survey No.466-A admeasuring 2428 sq. meters was vacant land and that land admeasuring 1464 sq. meters was excess vacant land liable to be acquired under the Act. Feeling aggrieved the petitioner preferred Appeal No.212 of 1990 before the

Urban Land Tribunal. The said Tribunal did believe that certain construction had been made on the land Survey No.466-A, but it was not shown that such construction was legal and was made after compliance with the statutory requirement in accordance with the sanctioned plan. In the opinion of the Tribunal the construction in question was illegal. The said land survey No.466-A was, therefore, treated as vacant land in the hands of the petitioner. In that view of the matter the Tribunal rejected the Appeal and confirmed the order of the competent Authority. Therefore, the present petition.

Mr. Gandhi has submitted that the Tribunal below has committed manifest error in holding that the construction in question was illegal, was not made in accordance with the sanctioned plan and was occupied without Building Utilisation permission. He has relied upon copy of the registered Sale Deed dated 8th May, 1943 under which the petitioner's father had purchased the property bearing Survey No.466-A with construction. He has submitted that there was no reason to infer that the construction in question was illegal and was used without B.U. Permission. He has also submitted that in view of the present proceeding before this Court the petitioner has continued to be in possession of the said land. He has also received the rent from the tenants, and he pays municipal taxes/property taxes. Thus, the possession having been continued with the petitioner in view of Section 4 of the Urban Land (Ceiling and Regulation) Repeal

Act, 1999 (hereinafter referred to as “the Act of 1999), the proceeding shall stand abated.

The petition is contested by Ms. Nair. She has relied upon the counter Affidavit and the documents annexed to the said Affidavit. She has submitted that pursuant to the order of the Competent Authority, confirmed by the Tribunal below, the State Government had issued Notification vesting the said land Survey No.466-A into the State Government. The State Government had also issued declaration u/s.10(5) of the Act and has taken over possession of the said excess vacant land on 30th July, 1992. She has submitted that before such possession was taken over the Notice as envisaged u/s.10(5) of the Act was given to the land owner, the petitioner herein. In the submission of Ms. Nair the proceeding under the Act was completed. The excess vacant land has vested in the State Government free from all encumbrances.

I do agree with Mr. Gandhi that there is sufficient evidence on record to establish that the construction did exist on the land Survey No.466-A. It seems to be a chawl, parts of which are also occupied by several persons. Each such unit has been given separate municipal survey number. Besides the said construction did exist in the year 1943 when the petitioner purchased it and was also leased out. There was no justification for the competent Authority to hold that the entire land bearing Survey No.466-A was vacant land or for the Tribunal to hold

that the construction made on Survey No.466-A was not legal and valid and that it was occupied without obtaining B.U. Permission. In any view of the matter it is apparent that the State Government has not taken over the possession of the said land in accordance with Section 10(5) of the Act. Sub Section (5) of Section 10 of the Act enjoins the competent Authority, by notice in writing, to order any person who may be in possession of the vacant land to surrender or deliver possession thereof to the State Government. Thus, it is person who is in possession of the land is entitled to a notice in writing. In the present case, admittedly the notice, as envisaged by Sub Section 5 of Section 10 of the Act, was given to the holder of the land alone and not to the persons in possession. The action of the State Government in taking over possession of the said excess vacant land unilaterally, contrary to the aforesaid Sub-Section 5 of section 10 of the Act, was illegal. I am, therefore, of the opinion that the State Government can not be said to have legally taken over possession of the said excess vacant land. The possession of the said excess vacant land thus continued with the petitioner. The Act of 99 is made effective in the State of Gujarat on 30th March, 1999. In view of Section 4 of the Act of 1999 the proceeding in respect of the said excess vacant land shall stand abated.

In view of the above discussion the petition is allowed. The impugned Judgment and order dated 13th

September, 1991 passed by the Urban Land Tribunal in Appeal No. Ahmedabad 212 of 1990 and the order of the Competent Authority dated 13th July, 1990 made in respect of the land Survey No.466-A, situated at Rakhial, are null and void and are hereby quashed and set aside. Rule is made absolute in above terms. The parties shall bear their own costs.

Date : July 3, 2007 (Ms. R.M.DOSHIT, J.)

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